

Permit: USACE General Permit No. 197800080

FINAL ADMINISTRATIVE PENALTY ORDER

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel John E. Pulliam, Jr., District Engineer, Wilmington District, issue this order assessing a Class 1 Administrative Penalty for violation of the above-referenced permit.

Name/Address of Permittee:

Mr. Desmond R. Foster, Jr.

Permitted Activity:

The construction of a bulkhead and retaining wall on property located off NC Highway 12, adjacent to Slash Creek and the Pamlico Sound, in Hatteras, Dare County, North Carolina, consistent with the application and plans for USACE General Permit No. 197800080, and State CAMA Permit No. 37329-A

Condition(s) or Limitation(s) of Permit Reportedly Violated:

Mr. Foster failed to comply with special condition (e) of the permit, which states, "This general permit does not authorize the construction or placement of structures nor the discharge of fill material within Department of the Army jurisdictional wetlands, seagrass or submerged aquatic vegetation."

Description of the Nature of the Violation(s):

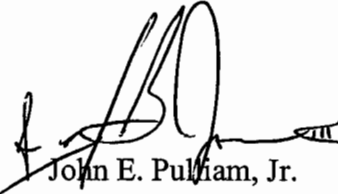
Mr. Foster discharged unauthorized fill material into approximately 9,900 square feet (0.22-acre) of high quality wetlands subject to Department of the Army Regulatory jurisdiction.

It is my decision that a Class 1 Administrative Penalty in the amount of \$5,000 shall be assessed against the permittee. Permittee will pay the penalty by cashier's or certified check, payable to FAO, USAED Wilmington, and delivered to the Office of Counsel, U.S. Army Engineer District, P.O. Box 1890, Wilmington, North Carolina, 28402, within 30 days from the effective date of this letter.

The issuance of this Order constitutes final U.S. Army Corps of Engineers action in this case for purposes of judicial review.

This order will become effective 30 calendar days following its issuance unless an appeal is taken pursuant to 33 U.S.C. § 1319(g)(8) or a hearing is granted. Since no hearing was held prior to the issuance of this Order, a prior commenter may file a petition for a hearing within the 30-day period.

Issued this 25th day of January 2006.



John E. Pulliam, Jr.
Colonel, U.S. Army
District Commander